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10/692,460	10/22/2003	Gregory Berrevoets	79722	7241
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FITCH EVEN FABIN & FLANNERY			NEGRELLI, CHRISTINA L.	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/692,460	Applicant(s) BERREVOETS ET AL.
	Examiner CHRISTINA NEGRELLI	Art Unit 3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 April 2009.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 and 24-30 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 24-27 is/are allowed.
 6) Claim(s) 1-20 and 28-30 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/1449)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-20, and 28-30 rejected under 35 U.S.C. 102(b) as being anticipated by Lin (US Pat.5,545,167).

Lin discloses a connecting assembly for interconnecting spinal rods (Fig. 5) secured to spinal vertebrae, the connecting assembly comprising: a pair of spinal rod connecting devices (Fig. 5, ref. 210); a contact surface of each of the connecting devices for seating on one of the spinal rods (Fig. 5, inner surface of ref. 210); a locking member (Fig. 5, ref. 220) for being shifted between a clamped position with the locking member clamping the spinal rod against the contact surface and an unclamped position with the spinal rod released (Fig. 5, ref. 411)(Fig. 6); and a non-threaded rotatable actuator at least partially disposed in each connecting device operable to shift the locking member between the clamped and unclamped positions (Fig. 5, ref. 400), the non-threaded actuator member being configured to be rotatable by a predetermined rotary amount less than one full turn thereof to a predetermined locked position thereof corresponding to the clamped position of the locking member on the spinal rod (Fig. 5)(Fig. 6). The contact surface for seating on the spinal rod is an arcuate surface (Fig.

5). The locking member has an arcuate surface such that the arcuate surface is secured against the spinal rod when in the clamped position (Fig. 5). The actuator member is rotatable by about 80° to about 110° to the locked position thereof corresponding to the clamped position of the locking member (Fig. 5). The actuator member has an axis of rotation and the actuator member shifts axially along the axis of rotation during rotation of the actuator member about the axis of rotation to the locked position (Fig. 5).

Lin discloses a connecting assembly for interconnecting spinal rods secured to spinal vertebrae (Fig. 5), the connecting assembly comprising: a pair of spinal rod connecting devices (Fig. 5, ref. 210); a contact surface (Fig. 5, inner surface of ref. 210) of each of the connecting devices for seating on one of the spinal rods; a locking member (Fig. 5, left ref. 220) for being shifted between a clamped position with the locking member clamping the spinal rod against the contact surface and an unclamped position with the spinal rod released (Fig. 5)(Fig. 6); and a rotatable actuator (Fig. 5, ref. 400) operable to shift the locking member between the clamped and unclamped positions (Fig. 6), the actuator rotatable by a predetermined rotary amount to a locked position thereof corresponding to the clamped position of the locking member on the spinal rod (Fig. 5)(Fig. 6), wherein at least one spinal rod connecting device further includes a spring retention member (Fig. 5, right ref. 220)(Fig. 6) for biasing the locking member in the unclamped position. The spring retention member is compressed when the locking member is moved to the clamped position (Fig. 5)(Fig. 6, since refs. 220 are brought together). The spring retention member is a split ring (Fig. 5) located around the

rotatable actuator member (Fig. 5), and the ring is compressed when the locking member is moved to the clamped position (Fig. 5)(Fig. 6). The rotatable actuator member has a recess (Fig. 5, ref. 430), and the recess is an annular channel.

Lin discloses a connecting assembly for interconnecting spinal rods secured to spinal vertebrae, the connecting assembly comprising: a pair of spinal rod connecting devices (Fig. 5, ref. 210) for being connected to a respective pair of spinal rods; a cross rod (Fig. 5, ref. 310') having opposite ends and a central longitudinal rod axis extending therebetween and being connected to a first one of the pair of spinal rod connecting devices at a first one of the opposite rod ends; a rod receiving member (Fig. 5, ref. 500) having a central longitudinal receiver axis and being connected to a second one of the pair of spinal rod connecting devices (Fig. 6), the rod receiving member including an internal bore (Fig. 5) oriented along the receiver axis and being configured for adjustably receiving a second one of the opposite rod ends so that the rod may be pivoted with respect to the receiver axis to provide the rod with variable angles relative thereto and so that the cross rod may be shifted axially along the rod axis to variable depths within the bore of the rod receiving member (Fig. 5); a clamp device for clamping against the cross rod received in the rod receiving member (Fig. 5, ref. 220); and a sleeve (Fig. 5, ref. 400) that extends about the rod receiving member and is shifted therealong for clamping the clamp device against the cross rod to fix the cross rod at an adjusted angle and an adjusted depth within the receiving member. The internal bore of the rod receiving member receives the cross rod such that the cross rod may be

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adjustably rotated in the rod receiving member around a longitudinal axis of the cross rod (Fig. 6). The clamp device may pivot to permit pivoting of the cross rod (Fig. 5)(Fig. 6). The clamp device includes an inner surface (Fig. 5) for mating with the external surface of the cross rod. At least a portion of the inner surface of the clamp device is arcuate for mating with the external surface of the cross rod (Fig. 5), and the cross rod may be rotatably adjusted relative to the clamp device (Fig. 5). The cross rod includes a protrusion (Fig. 5, e.g. ref. 320') for retaining the cross rod within the rod receiving member.

Lin discloses a connecting assembly for interconnecting spinal rods secured to spinal vertebrae, the connecting assembly comprising: a pair of spinal rod connecting devices for being connected to a respective pair of spinal rods (Fig. 5, ref. 210); a cross rod having opposite ends and a central longitudinal rod axis extending therebetween and being connected to a first one of the pair of spinal rod connecting devices at a first one of the opposite rod ends (Fig. 5, ref. 310'); a rod receiving member (Fig. 5, ref. 500) having a central longitudinal receiver axis (Fig. 5) and being connected to a second one of the pair of spinal rod connecting devices (Fig. 5)(Fig. 6), the rod receiving member including an internal bore (Fig. 5, ref. 430) oriented along the receiver axis and being configured for adjustably receiving a second one of the opposite rod ends so that the rod may be pivoted with respect to the receiver axis to provide the rod with variable angles relative thereto and so that the cross rod may be shifted axially along the rod axis to variable depths within the bore of the rod receiving member (Fig. 5); a clamp

device for clamping against the cross rod received in the rod receiving member (Fig. 5, ref. 220); and a sleeve (Fig. 5, ref. 400) for clamping the clamp device against the cross rod to fix the cross rod at an adjusted angle and an adjusted depth within the receiving member wherein the sleeve includes an internal structure (Fig. 5, ref. 412) that imparts a compression force on the clamp device for securing the cross rod (Fig. 5)(Fig. 6). The rod receiving member includes a terminal surface (Fig. 5) for limiting the position of the clamp device. The clamp device is compressed between the terminal surface of the rod receiving member and the internal structure of the sleeve to secure the cross rod (Fig. 5)(Fig. 6). The internal structure of the sleeve contacts the clamp device directly (Fig. 6). The internal structure of the sleeve that contacts the clamp device includes a shoulder portion (Fig. 5, ref. 412).

Lin discloses a connecting assembly for interconnecting spinal rods secured to spinal vertebrae, the connecting assembly comprising: a pair of spinal rod connecting devices (Fig. 5, ref. 210) for being connected to a respective pair of spinal rods; a cross rod (Fig. 5, ref. 310') having opposite ends (Fig. 5) and a central longitudinal rod axis extending therebetween and being connected to a first one of the pair of spinal rod connecting devices at a first one of the opposite rod ends (Fig. 6); a rod receiving member (Fig. 5, ref. 500) having a central longitudinal receiver axis and being connected to a second one of the pair of spinal rod connecting devices (Fig. 6), the rod receiving member including an internal bore (Fig. 5) oriented along the receiver axis and being configured for adjustably receiving a second one of the opposite rod ends so that

the rod may be pivoted with respect to the receiver axis to provide the rod with variable angles relative thereto and so that the cross rod may be shifted axially along the rod axis to variable depths within the bore of the rod receiving member (Fig. 5); a clamp device (Fig. 5, ref. 220) for clamping against the cross rod received in the rod receiving member; and a sleeve (Fig. 5, ref. 400) for clamping the clamp device against the cross rod to fix the cross rod at an adjusted angle and an adjusted depth within the receiving member wherein the sleeve is rotated to clamp the clamp device against the cross rod (Fig. 5)(Fig. 6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Lin (US Pat.5,545,167).

Lin discloses the claimed invention except for the rotatable actuator being located in a bore in the spinal rod connecting device, and the bore includes a pair of arcuate camming surfaces for camming against the rotatable actuator. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have placed the bore and camming surfaces in the connecting device and a portion of the rotatable actuator being located within the bore, since it has been held that a

mere reversal of the essential working parts of a device involves only routine skill in the art. In re Einstein, 8 USPQ 167.

Allowable Subject Matter

Claims 24-27 are allowed.

Response to Arguments

Applicant's arguments filed 04/24/2009 have been fully considered but they are not persuasive.

As to claims 1, 4, and 8, the applicant asserts that Lin does not teach "...a locking member for being shifted between a clamped position with the locking member clamping the spinal rod against the contact surface and an unclamped position with the spinal rod released; and a rotatable actuator operable to shift the locking member between the clamped and unclamped positions..." More specifically, the applicant believes that Lin's locking nut (400) does not serve to shift the locking member with respect to the contact surface. The examiner respectfully disagrees.

Lin discloses a locking member (Fig.5, ref.220) for being shifted between a clamped position with the locking member clamping the spinal rod (Fig.5, ref.100) against the contact surface (inner part of retaining ring – 210) and an unclamped position with the spinal rod released (see Fig.5 – released state) (see Fig.6 - clamped state). Rotation of the locking nut (400) does shift the rod into contact with the inner surface (210) (see Figs.5-6) as it causes the inner part of the ring (210) to retain the rod

(col.5, ll.13-21). For this reason, independent claims 1, 4, and 8, as well as their respective dependent claims, stand rejected against Lin.

The applicant further asserts that claim 4 has been amended to require that each rotatable actuator is at least partially disposed in a spinal rod connecting device. The applicant believes Lin does not anticipate an actuator that is partially disposed in a spinal rod connecting device. The examiner respectfully disagrees.

Lin discloses a rotatable actuator (Fig.5, ref.400) that surrounds the square heads (220) of the spinal rod connection device (200). The actuator (400) is partially disposed or placed in the connection device (200) as stop elements (420) engage retaining slots (221) (col.4, ll.5-16). Lin also discloses a clamp device for clamping against the cross rod received in the rod receiving member (Fig. 5, ref. 220); wherein the cross rod (Fig.5, ref.300)

As to independent claims 10, 16, and 30, the applicant asserts that Lin fails to disclose a sleeve that extends about the rod receiving member. The applicant further asserts that Lin fails to disclose a clamp device for clamping a cross rod received in a rod receiving member. The examiner respectfully disagrees.

Lin discloses a sleeve (Fig.5, ref.400) that extends about the rod receiving member (Fig.5, ref.200). Lin also discloses a cross rod (Fig.5, ref.310') that is received in a rod receiving member (Fig.5, ref.200) as head (220) goes through the ends of the cross rod (see Fig.5) and is clamped as it goes through elements 400 and 500 as seen in Fig.5.

For the reasons described above, claim 7 still stands rejected in view of Lin.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINA NEGRELLI whose telephone number is (571)270-7389. The examiner can normally be reached on Mon-Fri. 7:30-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. N./

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733